IN THE **HIGH** COURT **OF JUDICATURE** AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMARY SUIT NO. 1700 OF 1983

B.E. BILLIMORIA & CO. ..PLAINTIFFS
V/S
MUNICIPAL CORPORATION OF THE
CITY OF THANE & ANR. ..DEFENDANTS

MR. M.N. KOTHARI WITH MS. D.Z. KHAPRA FOR PLAINTIFFS.
NONE FOR DEFENDANTS.

CORAM : S.K. SHAH, J.
DATE : 8TH NOVEMBER,2006.

P.C.

1. Although the notice was sent to the defendants no one is present. Heard the learned advocate for the plaintiffs.

2. The plaintiffs have filed the suit for recovery of balance amount of Rs. 3,34,423.88 and interest at the rate of 15% per annum from the date of institution of the suit on Rs. 2,66,208.88.

3. It is undisputed that the defendants had invited tenders for carrying out the construction work of the stadium at Thane. The plaintiff's tender was accepted. The plaintiffs have carried out the construction work of the stadium at Thane. The defendants have invited the tenders in Bombay.The plaintiffs have submitted their tender in Bombay. The part of the cause of action has arisen in Bombay. The final certificate of the architect shows that on 30-9-1981 the amount due from the defendant was Rs. 1,78,52,374.97. After adjusting the payment made by the defendants to the plaintiffs, the final amount due as per the architect's certificate was Rs. 12,96,302.39. The plaintiffs themselves had deducted the amount of statutory income tax deductions, cost of the cement supplied by the defendants, electricity charges, water charges and telephone charges payable by the plaintiff and as indicated in Exhibit "B". After deducting all these amounts from the balance of Rs. 12,96,302.39, the amount that remained due is Rs. 2,66,208.88 as indicated in Ex. D. The plaintiffs instituted the suit as this amount was not paid by the defendants. The plaintiffs have filed the aforesaid suit for

recovery of the balance amount alongwith the interest.

4. The defendants resisted the suit by their written statement dated 18th June, 1985. Besides raising the defence of limitation, the defendants have also raised the defence that one of the workmen died while executing the construction work by the plaintiff and the amount of workmen's compensation is required to be paid and therefore the defendants are not liable to pay. Accordingly the issues were framed which are as follows and I have recorded my findings thereon for the reasons stated below:-

Issues	Findings
1) Whether the suit is barred by limitation?	In the negative.
2) Whether this Hon'ble Court has no jurisdiction to entertain and try the suit?	In the negative.

3) Whether the suit is liable to be dismissed for want of notice under section 487 of the Bombay Provincial Corporation Act?	In the negative.
4) Whether the plaintiffs prove their claim against the defendants fully and completely?	In the affirmative.

REASONS

5. The plaintiffs have led the evidence of T. Ramakrishnan, Constituted Attorney of the Plaintiffs.

Issue No.1 : With regard to this issue, the suit is filed in 1983 on the basis of the Architect's certificate dated 28-5-81. Hence the suit is within limitation. This issue is therefore answered in the negative.

Issue No. 2: With regard to this issue, this court has jurisdiction as part of the cause of

action arose within the jurisdiction of this court. The tenders were submitted in Bombay. They were accepted in Bombay. The defendants' architect has issued final certificate in Bombay. Therefore, this issue will have to be answered in the negative.

Issue No. 3 : With regard to this issue, the notice under the provisions of section 487 of the

Bombay Provincial Corporation Act, is not necessary as the present suit is filed for recovery of the amount based on the contract. Therefore the notice required under section 487 of the said Act is not necessary. Hence this issue will have to be answered in the negative.

Issue No. 4 : With regard to this issue, the plaintiffs have filed the Architect's certificate dated 30/9/1981 whereby the Architect has certified the payment to be made by the defendants to the plaintiffs after adjusting Rs. 1,78,52,374.97. The witness has stated that the payments were received from time to time and only balance of Rs. 12,96,302.39 was due. The plaintiffs have also deducted from this amount the

dues payable by the plaintiffs by adjusting the total amount of Rs. 10,40,262.76. This witness has stated that that the only amount due from the defendants to the plaintiffs was Rs. 2,66,209.88. **The** same has been proved by the plaintiffs. On this amount the plaintiffs have charged interest @ 15% per annum from the date of the institution of the suit till the payment. The total amount comes to Rs. 3,34,423.88. The plaintiffs are entitled for this amount. Hence the suit is decreed in terms of prayer clause. The decree be drawn accordingly. The suit stands disposed of.

(S.K. SHAH, J.)